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Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Jeffrey Hurst
Regional Director

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT**

**ISSUED TO
PILOT TRAVEL CENTERS LLC
FOR
FLYING J TRAVEL PLAZA #750
Incident Report ("IR") No. 307831
Facility ID No. 1019868**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the Department and Pilot Travel Centers, LLC, regarding the Flying J Travel Plaza #750, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context indicates otherwise, the terms used in the Consent Order have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.* and 9 VAC 25-580-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Pilot is the owner and operator of Flying J Travel Plaza #750, located at 139 Factory Outlet Drive, Max Meadows, in Wythe County, Virginia (Facility). Pilot stores a regulated substance, in the form of diesel fuel, in underground storage tanks (USTs) at the Facility. Pilot is a "person" within the meaning of § 62.1-44.3.
2. On January 11, 2023, DEQ received notification of a release of oil, in the form of diesel fuel, at the Facility. IR No. 307831 was assigned to the incident. The notification was

made by Apex Companies, LLC (Apex), Pilot's consultant. Apex contracted with an environmental consultant for containment and cleanup of the spill. The initial report indicated that between 1,000 and 2,000 gallons of diesel fuel was released during the transfer of fuel from a 300,000 gallon above ground storage tank (AST) to the smaller USTs that supply the Facility's fuel dispensers. The UST overflowed, and diesel fuel subsequently flowed across the Facility parking lot and into two drop inlets. Diesel fuel entering the drop inlets discharged into an unnamed tributary of Reed Creek. On that same date, SWRO staff observed an oil sheen in Reed Creek at the confluence with the unnamed tributary.

3. On January 13, 2023, Apex notified DEQ that approximately 4,200 gallons of diesel fuel were released as a result of the January 11, 2023 UST overfill.
4. On January 18, 2023, SWRO Remediation staff sent a letter to Pilot requesting submittal of an Initial Abatement Report to DEQ by February 18, 2023.
5. On January 19, 2023, DEQ issued NOV No. NOV-002-0123-WA to Pilot for a discharge of oil to the land and state waters. On January 20, 2023, Apex, on behalf of Pilot, provided an initial response to the NOV.
6. On January 19, 2023, SWRO Land Protection and Remediation staff visited the Facility in response to the January 11, 2023 release of oil. During the Facility visit, SWRO staff requested submittal of documentation related to UST compliance. The requested documentation was submitted on January 24, 2023.
7. On January 23, 2023, a conference call was held between DEQ, Pilot, and Apex to discuss the January 19, 2023 NOV. DEQ requested that Pilot submit a written response to the NOV. DEQ also requested that Pilot submit additional information regarding UST leak and overfill protection systems, to include applicable system data at the time of the overfill.
8. On January 24, 2023, Apex submitted a written NOV response, including the requested information regarding UST leak and overfill protection systems and applicable system data at the time of the overfill. The response indicated that the UST overfill protection system was inoperable at the time of the overfill. Apex estimated that approximately 800 gallons of diesel fuel was recovered during containment and cleanup operations. Apex also provided a summary of corrective actions implemented by Pilot in order to prevent future overflows at the Facility.
9. SWRO staff performed a review of the UST compliance documentation, submitted on January 24, 2023. Findings of the review are documented in an UST Facility Inspection Report, dated January 11, 2023.
10. The January 11, 2023 UST Facility Inspection Report documented that, at the time of the diesel fuel release, the overfill monitoring equipment associated with fuel transfer from the 300,000 gallon AST to USTs 5 and 6 was reportedly damaged or the function was

impaired. In addition, the overfill alarm(s) associated with fuel transfer from the 300,000 gallon AST to USTs 5 and 6 was reportedly not functioning properly.

11. 9 VAC 25-580-60(4) states: "Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with UST system spill and overfill prevention equipment requirements specified in subdivision 3 of 9VAC25-580-50."
12. 9 VAC 25-580-50(3) states, in part: "...to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment: ...(2) Overfill prevention equipment that will: (a) Automatically shut off flow into the tank when the tank is no more than 95% full; (b) Alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm; or (c) Restrict the flow 30 minutes prior to overfilling, alert the transfer operator with a high level alarm one minute before overfill, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling."
13. The January 11, 2023 UST Facility Inspection Report documented that, in the late morning of January 11, 2023, store personnel reportedly initiated a 15,000 gallon transfer of diesel fuel from the 300,000 gallon AST to USTs 5 and 6 without verifying the volume available in USTs 5 and 6 was greater than the volume of diesel fuel to be transferred.
14. 9 VAC 25-580-80 states, in part: "Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling."
15. On February 1, 2023, DEQ issued Notice of Violation No. TSWRO386196 to Pilot for the violations described in paragraphs C(10) through C(14), above. On that same date, Apex provided a telephone response to the NOV. On February 4, 2023, Apex submitted a written response to the NOV.
16. Based on the results of January 11 and 19, 2023 DEQ Facility visits, the DEQ UST compliance inspection report, dated January 11, 2023, the January 23, 2023 conference call, and the correspondence submitted on behalf of Pilot on January 13, 2023, January 24, 2023, and February 4, 2023, the Department concludes that Pilot has violated 9 VAC 25-580-50(3), 9 VAC 25-580-60(4), and 9 VAC 25-580-80, as described in paragraphs C(10) and C(14), above.
17. In order for Pilot to complete its return to compliance, DEQ staff and representatives of Pilot have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Department orders Pilot Travel Centers LLC, and Pilot Travel Centers LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,202.60 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Pilot Travel Centers LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Pilot Travel Centers LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Pilot for good cause shown by Pilot, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. TSWRO386196, dated February 1, 2023. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Pilot admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Pilot consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Pilot declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by Pilot to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Pilot shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Pilot shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pilot shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Pilot. Nevertheless, Pilot agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Pilot has completed all of the requirements of the Order;
- b. Pilot petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to Pilot.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Pilot from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Pilot and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Pilot certifies that he or she is a responsible official Pilot authorized to enter into the terms and conditions of this Order and to execute and legally bind Pilot to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Pilot.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Pilot voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23rd day of May, 2023.



Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

Pilot Travel Centers LLC voluntarily agrees to the issuance of this Order.

Date: 4-5-23 By: [Signature], Sr. Director, Environmental
(Person) (Title)
Pilot Travel Centers LLC

State of Tennessee
~~Commonwealth of Virginia~~

City/County of Knox

The foregoing document was signed and acknowledged before me this 5th day of
April, 2023, by Joey Cupp who is
authorized rep of Pilot Travel Centers LLC, on behalf of the
company.

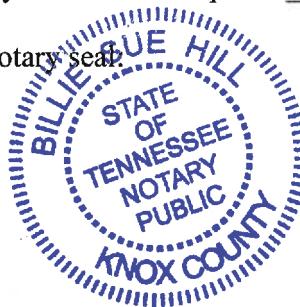
[Signature]

Notary Public

Registration No.

My commission expires: 8-29-26

Notary seal



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APPENDIX A SCHEDULE OF COMPLIANCE

Pilot Travel Centers LLC shall complete the following actions:

1. Within 90 days of the effective date of this Order, submit a Site Characterization Report (SCR) to assess site contamination conditions, risks posed by the release, and remedial options for cleaning up the release. Based on the review of the SCR report, Pilot Travel Centers LLC will coordinate any further corrective actions with the DEQ-Southwest Regional Office tank remediation case manager.
2. Unless otherwise specified in this Order, Pilot shall submit all requirements of Appendix A of this Order to:

Jonathan Chapman
Enforcement Specialist
Virginia DEQ – Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
jonathan.chapman@deq.virginia.gov